COMMONWEALTH OF MASSACHUSETTS

#213

Barnstable, ss. Superior Court

SUPERIOR COURT
BARNSTABLE, SS
Filed DEC 05 2017
Scott W. Nickerson Clerk

COMMONWEALTH)
)
v.) No. 1995CR46579
)
EMORY G. SNELL, JR.,)
Defendant)

MOTION FOR A NEW TRIAL

Defendant Emory G. Snell, Jr., moves, pursuant to Mass.R.Crim.P. 30(b) that the Court grant him a new trial.

The grounds for this motion are, individually and collctively:

*Newly discovered evidence

*Newly discovered exculpatory evidence

*A substantial risk of a miscarriage of justice.

*Ineffective assistance of counsel.

*Actual Innocence.

The foregoing grounds for a new trial are set forth in detail in the accompanying Memorandum of Law, and affidavits and exhibits collected in the Appendix, also submitted herewith.

Finally, defendant submits herewith a Motion for Discovery and requests an evidentiary hearing on his Rule 30(b) motion.

Respectfully submitted,
EMORY G. SNELL, JR.

Richard J. Shea

By: Richard J. Shea, Esq.
398 Columbus Ave. no. 194
Boston, MA 02116
617-909-4321
BBO 456300

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT DEPT.
BACR95-46579

COMMONWEALTH,

v.

EMORY G. SNELL, JR.

AFFIDAVIT OF EMORY G. SNELL, JR.,
IN SUPPORT OF NEW TRIAL MOTION

I, Emory G, Snell, Jr. having personal knowledge of those facts hereto, do affirm the following is true and correct:

1. I was arrested and subsequently convicted in the 1st degree murder of my wife Elizabeth Snell in 125 days (indictment to conviction). From arrest to present, I have strongly protested my innocence. I now know that Elizabeth's death was a natural fatal cardiac arrhythmia;

2. At trial, defense counsel Albert C. Bielitz, Jr. sought four (4) Discovery motions: (i) hospital records (P#10); (ii) Scientific physical evidence (P#13), and (iii) Scientific expert witnesses (P#14); and (iv) Intra/inter departmental police records and reports (P#15). However, despite three (3) motions to compel allowed by Judge Travers (P##34, 37, & 47), the State never provided any of that requested / compelled discovery. I specifically wrote a letter to Michael O'Keefe in September 1999, and

he replied that all discovery that I was asking for had already been turned over to trial and appellate counsel;

3. In further prejudice, while I was still collaterally attacking my conviction sometime in 2000, Judge O'Neill sua sponte Ordered the destruction of medical evidence, which neither defense counsel or myself were afforded to inspect;

4. In reference to ¶3, it is my belief and opinion that the medical records sua sponte destroyed were in fact held by the trial court in camera, and never provided for me to use in my defense that Elizabeth died of natural causes. I now can claim that I was wrongfully convicted due in part to the in camera withholding of this material medical/hospital records evidence;

5. Accordingly, on Dec. 16, 2005, Judge Connon granted me Post-Conviction discovery of ALL materials held in the custody of the Massachusetts Office of the Chief Medical Examiner (OCME) since 1995 regarding the autopsy of my late wife Elizabeth Snell performed by OCME Dr. William Zane. From this motion, I engaged independent academic pathologist, Ed Friedlander, MD. Dr. Friedlander determined through recuts of the tissue blocks and tissue samples that Dr. Zane utilized during Elizabeth Snell's autopsy did contained a baby's heart / liver. Dr. Friedlander's microscopic examination additionally exposed healing and/or regeneration of cuts, which Dr. Zane repeatedly testified resulted at or during the time of death;

6. To date, no material medical evidence has been presented to me, my counsel, or experts that indisputably shows that any of Elizabeth's blood was present on any bedding, i.e., sheets, pillowcase, or clothing recovered from Elizabeth Snell. I have read testimony and expert documentation that illustrates Dr. Zane's contention

proving injuries inflicted at death, which should unquestionably produce blood, as the heart would have been pumping. There are numerous pictures of the bedding and nowhere corresponding to any of the alleged injuries are there evidence of bleeding.;

7. I have read Dr. Young's analysis, particularly his discussion of the injuries, and find that he too agrees with other experts, that if Elizabeth was alive when she received these "17 injuries", that she would have bled on the bedding. I have learned from my experts that there is no medical evidence that supports that Elizabeth was moved from where she was found;

8. I have read five (5) expert pathology opinions regarding the cause of death of Elizabeth Snell. None of these five (5) experts, including two (2) former Office of the Chief Medical Examiner (OCME) pathologists have found beyond a medical certainty and/or probability that Elizabeth Snell died from "asphyxia due to smothering." Upon microscopic examination, each has discredited Zane's "Diagnosis of Exclusion" finding on forensic pathology community of peers protocols. For example, none of those experts found any medical evidence consistent with asphyxia, e.g. "frothing" or heavy congestion in both lungs. At autopsy, Dr. Zane found one lung was heavy and the other light. No trauma was found to Elizabeth's face as documented by the engaged experts. Specifically, neither her nose or lips showed trauma which is typical of the "hypothetical" advanced by both Dr. Zane and the Prosecutor Michael O'Keefe. The hypothetical is also inconsistent with the medical evidence as documented by my experts. The hypothetical was that a 6'4" man, weighing 250 pounds was "spread eagle" across Elizabeth Snell's back, using one hand to press her head into a pillow, with the other held her right ankle. The autopsy

he replied that all discovery that I was asking for had already been turned over to trial and appellate counsel;

3. In further prejudice, while I was still collaterally attacking my conviction sometime in 2000, Judge O'Neill sua sponte Ordered the destruction of medical evidence, which neither defense counsel or myself were afforded to inspect;

4. In reference to ¶3, it is my belief and opinion that the medical records sua sponte destroyed were in fact held by the trial court in camera, and never provided for me to use in my defense that Elizabeth died of natural causes. I now can claim that I was wrongfully convicted due in part to the in camera withholding of this material medical/hospital records evidence;

5. Accordingly, on Dec. 16, 2005, Judge Connon granted me Post-Conviction discovery of ALL materials held in the custody of the Massachusetts Office of the Chief Medical Examiner (OCME) since 1995 regarding the autopsy of my late wife Elizabeth Snell performed by OCME Dr. William Zane. From this motion, I engaged independent academic pathologist, Ed Friedlander, MD. Dr. Friedlander determined through recuts of the tissue blocks and tissue samples that Dr. Zane utilized during Elizabeth Snell's autopsy did contained a baby's heart / liver. Dr. Friedlander's microscopic examination additionally exposed healing and/or regeneration of cuts, which Dr. Zane repeatedly testified resulted at or during the time of death;

6. To date, no material medical evidence has been presented to me, my counsel, or experts that indisputably shows that any of Elizabeth's blood was present on any bedding, i.e., sheets, pillowcase, or clothing recovered from Elizabeth Snell. I have read testimony and expert documentation that illustrates Dr. Zane's contention

report diagram and photographs do not exhibit any trauma to Elizabeth's back, which unassailably would have been inflicted under the Zane/O'Keefe hypothetical scenario;

9. I further am of the belief and opinion that this newly discovered medical / forensic material uncovered a decade after my trial in the custody of the OCME was the subject of my 1995 trial discovery motions (PP##10, 13, 14, 15), which the State suppressed. Even though defense counsel retained Dr. George Katsas, this material was never discovered in 1995. Nor did Katsas report on "undigested meat and potatoes" documented in Dr. Zane's autopsy of Elizabeth, which are critical to determining time of death. I know that My defense counsel, Albert C. Bielitz, Jr., motioned to depose Mary Hoppe (P#32 – 6/15/1995), Elizabeth's mother, on the time of their 3/16/1995 dinner, but the court never allowed it. I have never seen a report by Dr. Katsas. Albert C. Bielitz, Jr. never provided me with any information given to him by Dr. Katsas regarding the number of scientific errors and omissions of Dr. Zane's autopsy. I contend on the fact of custody of the OCME since 1995, that Dr. Katsas' review was equally as inept as Dr. Zane's. I also newly discovered in the federal habeas petition of Commonweath v. David Magraw, Norfolk Superior Court, 97843 (Houston, J., April 13, 1999 (Volume VII, pages 1-269), that Dr. Katsas was a member of the OCME's State Panel of Pathologists. I was never told of this conflict of interest;

10. I was told by Albert C, Bielitz, that Dr. George Katsas was a well-experienced pathologist. It was not until after the 2011 newly discovered medical evidence that I was able to confirm that Dr. Katsas did not recognize the difference between a

doctor-prescribed and an over-the-counter inhaler. On March 12, 1995, I accompanied Elizabeth across Rt. 28 to the Cotuit Plaza, across from our marital home, where we entered Brooks Drug. I offered to drive us to Brooks Drug, but Elizabeth insisted we make the short walk on foot. I followed Elizabeth to the pharmacy counter, and heard her inquire of the pharmacist where the over the counter inhalers were kept. The pharmacist pointed to an adjacent aisle, and specifically recommended the Brooks Bronchial Mist inhaler. Elizabeth picked the inhaler off the shelf, went to the cashier, paid for it, and we exited the store. Outside, Elizabeth immediately assembled the inhaler, took 2 puffs, and we began our walk home. I noticed within ten minutes that Elizabeth was no longer gasping for breath, or having difficulty breathing. The entire previous week I repeatedly asked Elizabeth if I could take her to either Falmouth or Cape Cod Hospital, as I witnessed her episodes of shortness of breath, repeated nausea attacks, and dizziness. Each time she declined;

11. From March 12, 1995 there was no other inhaler besides the Brooks Bronchial Mist inhaler in our home. Elizabeth kept the inhaler adjacent to her side of the bed on the nightstand within her reach. After March 12, 1995, I noticed that at least 3 times daily she would take at least 2 puffs from the Brooks Bronchial inhaler. At the time I had no way of knowing that the Brooks Bronchial Mist inhaler was similar to the Primatene Mist inhaler that contained epinephrine, and had been the subject of media reports concerning premature deaths. In fact, it was not until a long time after my direct appeal that I saw an article contained in August 1995 Time magazine where in June/July 1995 that Krissy Taylor, sister of super model Niki Taylor, had died from the use of her Primatene Mist inhaler. As of this day, I am of the belief and opinion

that the Brooks Bronchial Mist inhaler was never tested by the State Police lab, or that Dr. Katsas independently sought to have it tested;

12. For twenty-two (22) plus years, I have suffered actual legal harm when the State wantonly secreted material forensic exculpatory evidence that Elizabeth did not die of asphyxia. I conclude this, not only by relying on those five (5) expert pathology determinations, but on several pre and post trial/appeal media articles reporting that Dr. Zane's autopsies in other cases are equally incompetent. For example, in the autopsy of Kelly Proctor, who was black, Dr. Zane declared Proctor as white, and also placed Proctor's brain in the wrong preservative, causing it to swell. This error was discovered by an OCME neuro-pathologist, which caused the Middlesex DA to downgrade first-degree murder charges to manslaughter. This combination of expert findings, especially that of former OCME Chief of Staff Dr. Stanton Kessler, as well as Attorney Joseph Krowski's affidavit, demonstrated that Dr. Zane did not disclose to the Grand Jury or trial jury his poor performance during Fellowship, and the resulting termination for being an unfit forensic pathologist under the supervision Maryland Chief Medical Examiner, Dr. John Smialek. See April 19, 1995 Grand jury, pg. 49. I did not know until 2011 that Dr. Zane's unfitness was suppressed by either the State or the OCME, despite my specifically detailed discovery motions. I now know that both the Grand and Petit Juries did not have this overwhelming and unassailable Zane incompetence material before then;

13. When I finally reviewed Dr. Kessler's 2011 report, and where he suddenly passed away in December 2011, I submitted a Massachusetts's public records law demand on the Office of the Chief Medical Examiner. My 27 paragraph request concisely

demanded any and all disciplinary, infraction, or punishment administered to Dr. Zane from the date of his 1987 employ to the present, which was 2013. The OCME initially denied my request stating that the majority of the material I sought was protected by privilege. Prior to the denial of my request, the OCME provided superfluous materials, that were irrelevant, and I timely appealed. I appealed this denial to Shawn Williams, Supervisor of Public Records, who initiated an administrative order commanding the OCME to comply within 10 days. The OCME disobeyed the administrative order, and I appealed to the Single Justice of the SJC, who denied me relief. I then timely appealed to the full court, and the matter is now pending in Snell v. OCME, No. SJC-11530;

14. I certainly had no knowledge that Dr. Kessler restricted Dr. Zane from suspected close contact homicides unless Dr. Zane was supervised by Drs. Weiner or Kessler himself. I did not know that Dr. Kessler believed that Dr. Zane "lacked a basic understanding of pathology." I did not know that Dr. Kessler found Dr. Zane "negligent," and that Dr. Zane count not be dismissed due to OCME budget constraints. I especially did not know that Dr. Zane performed autopsies on Mathias Baresco (1987); Douglas Staples (1988), and Morris Pina (1990) in which each were remarkably similar. In Pina, my expert, Dr. Michael Baden found death to be a "choke hold" while in police custody. This too, should have been turned over upon my defense request for scientific witness and/or physical evidence to impeach Dr. Zane's expert testimony;

15. Prior to my 1995 trial Dr. Zane presented the Grand Jury with his credentials. At my 1995 trial, Zane's his credentials were stipulated by my counsel Albert C. Bielitz

because at the time he was not aware that Zane's credentials were false. Bielitz turned to me, when I inquired what stipulated meant, and he remarked, that he would not contest Zane's credentials because the State's expert was usually accepted as being qualified to what he testified to. I now know that I suffered prejudice and denial of a fair trial by Bielitz's failure to investigate that Zane was not purported to be the qualified pathologist that he claimed. This conclusion is underscored by newly discovered material from Dr. Kessler, Attorney Joseph Krowski, who both informed me that Maryland Chief Medical Examiner Dr. John Smialek terminated Dr. Zane for being unfit from his own personal observations that are newly documented in 2011 and 2017, respectively. The State suppressed all that exculpatory Brady material newly discovered by Dr. Kessler's personal observations of Dr. Zane. Had the Grand or Petit Jury heard that Elizabeth's death was natural causes, I would have been acquitted;

16. I did not receive a fair trial or due process. This conclusion is reached by the fact that at the time of my arrest, the information regarding Dr. Zane's incompetence had to be known to both the OCME and the prosecutor's office nearly a dozen years prior to my trial due to Zane's close relationship with both agencies with criminal investigations. In my case, Zane was the prosecution's star witness. Had Zane performed a competent autopsy, there never would have been charges brought to the Grand Jury. This I surmise is the only cognizable outcome where Zane's autopsy failed to perform the proper pathology protocols on examine all the major organs, or take the requisite adequate samplings for microscopic examination. Had he followed proper pathology protocols, the outcome could have only been a natural causes death;

17. Had it not been for the freezing of all my assets by the probate court, and the $100,000 Court-Ordered "lien," I would have been financially able to retain counsel of choice and pay for an effective second forensic pathologist. The record shows (P#4 - 4/27/1995), (P#33 – 6/15/1995), (P#35 – 6/30/1995) that Bielitz sought a motion for expert funds, among other things, however these motions were never acted upon, and no funds were ever made available for me, now an indigent to consult with a second forensic pathology expert. I specifically recall at an August 14, 1995 lobby conference with Judge Travers that the conversation turned to the defense's request for extra funds in which to hire a second pathologist, as well as for this second pathologist to perform a meaningful investigation of Zane's autopsy. I particularly recalled that Judge Travers remarked that the "county lacks the funds" to grant a continuance;

18. The record also demonstrates that I was indigent after April 27, 1995. I was unable to pay counsel to defend against the charge of 1st degree murder;

19. Defense counsel Bielitz motioned for funds after the Court deemed me indigent, with the intent of testing the competency of Dr. Zane's autopsy and to formulate a meaningful defense;

20. At the time, the only information that I could relay to Bieltiz was that I did not take Elizabeth's life, and that she had episodes of shortness of breath, and required an inhaler;

21. As the defendant, charged with murder, with no funds of my own, I had no financial ability to uncover exculpatory evidence or the ability to exercise my constitutional right to present a defense;

22. Without the Court ruling on my many motions for funds to hire a second forensic pathologist, I was denied access to the raw materials integral to the building of an effective pathology defense that demonstrated my innocence. This denial created per se prejudice, and violated my right to fundamental fairness of due process. I also was denied equal protections of both the federal and state constitutions because the caliber of justice that I received explicitly depended upon the amount of money I had to mount a defense;

23. Consequently, I had the funds prior to 4/27/1995 to hire a second forensic pathology expert which was reasonably necessary to ensure I would receive as effective a defense as I would have had the financial ability to pay;

24. The Court's denial by failing to act on my motion for expert funds skewed the evenhandedness of my trial. To further demonstrate my prejudice, the State prosecutor had superior resources and was able to produce experts at will, or others necessary to underpin his case. Where I did not receive the reciprocity, the balance of the adversarial process weighed heavily against me, denying me well recognized constitutional rights;

25. I contend that the reasonable necessity for indigent funds for a second forensic pathologist subjected me to a disadvantage where my attorney was unable to properly prepare of present an adequate defense because I was unable to pay for the preparations that were reasonably required;

26. On July 6, 2000, I received a letter from First Assistant Bar Counsel Constance V. Vecchione that on June 19, 2000, the Supreme Judicial Court entered an 18 month suspension on Albert C. Bielitz Jr. (In Re: Albert C. Bielitz Jr., BD2000-029);

27. In April 1996 I personally contacted the State's climatologist, Robert E. Lautzenheiser in regards to the weather in Marstons Mills, MA on 3/17/1995. Mr. Lautzenheiser responded to me in April 1996 detailing his research of National Climatic Data Center information for that day. He also suggested exploring the local logs of Marstons Mills Fire and Police Departments. In his summation he specifically stated " I am amazed that your lawyer let the clear weather pass into the records with no challenge, with such refuting documents that would have easily been available to him..." In May 2011, Mr. Lautzenheiser, a 50 year MA state climatologist, provided an affidavit where in pertinent part he stated "Upon expert evaluation of all related weather data, it is my expert opinion on March 17, 1995, specifically at 6:30am that it could not be clear and sunny as during that time, a nor'easter was blanketing all of the Cape and Islands." (Aff. At P#5);

28. Bieltiz specifically retained James O. Mills as a private investigator. I believe Mills was a former Cambridge Police Department detective. In the two conversations that I had with Mills, I inquired as to what he specifically he was investigating. Mills stated that his investigations had been side-lined due to Bielitz's loss of driver's license, as he drove Bieltz everywhere he needed to go. Mills did not mention any interviews with any of the State Police, local people or anything of importance;

29. I did not find out that James O. Mills had been indicted on numerous charges where he defrauded the Committee for Public Counseling Services (CPCS) out of $500,000 until John Barter, my appellate attorney had begun compiling my direct appeal. Mills was subsequently convicted. It was not until January 5, 2004, in a request to Patricia

Wynn of CPCS regarding Mills and his billing in my case, that I learned for the first time that CPCS refused to pay Mills approximately $7460.61, consisting of a payment voucher, two allowed motions for funds, and an itemization of hours. The bill was received by CPCS in September 1995. I surmise that Bielitz was ineffective and denied me the essential investigative services that would have added crucial exculpatory evidence to further buttress my actual innocence case. For instance, the Cape Codder employee noted on (PP#30, 31) of the Grand Jury testified through State Police that prior to 7 A.M. I was on the motel phone in the room discussing checking out. Had Mills done a proper investigation, he would have located this specific employee. The employee worked the graveyard shift (11pm-7am). That would have substantiated that I was nowhere near my home, some 20-25 minutes away in Marstons Mills when supposedly Rosen had seen me. The State Police never turned over any hand-written notes of the interview with this employee, and the SJC wrongly concluded that this employee's testimony would have only marginally aided in my defense. This conclusion is patently incorrect as the Cape Cod employees who testified to my exiting the Motel at 7:56am evidenced by a folio worked the 7:00am-3pm day shift and had no personal knowledge of the situation or my discussion earlier in the day with the nightshift employee. I feel Bieltiz was further ineffective here, as I strongly surmise that Bieltiz did not read the Grand Jury minutes in general, and specific to this Cape Codder employee, nor did he instruct Mills to investigate;

30. In 1996, after my conviction, CPCS appointed John Barter to do my direct appeal. Barter's direct appeal at footnote 10, page 8 commented on Zane's failure to review Elizabeth's medical records, or consult a cardiac or pulmonary specialist. Barter

never approached CPCS for funds to investigate. It was later discovered in 2005 by privately retained Counsellor Irving Marmer that the medical evidence at autopsy was inconsistent with an asphyxial cause of death. I believe that this denial of appellate counsel deprived me of a fundamental right to a meaningful appeal of my wrongful conviction. Counsellor Marmer was in the exact same position as Barter, reading from a cold record, and did not possess any extraordinary skill in the medical field. Had Barter, performed a de minimus investigation, he could have determined that Zane's incompetence was known throughout the OCME. I support this conclusion by the Barasco, Staples, and Pina media articles that were reported 8, 7, 5 years respectively prior to my trial;

31. From 4/27/1995 up to present I have been gravely indigent. I have no access to financial resources in which to attack my wrongful conviction;

32. Sometime in 2005 I was loaned money from Belinda Souza to engage Counsellor Irving Marmer. Counsellor Marmer then engaged Dr. Edward Friedlander, and through Dr. Friedlander determined that Dr. Zane's autopsy was fundamentally flawed. Counselor Marmer informed me that Dr. Friedlander needed to microscopically examine the tissue samples in the custody of the OCME, and proceeded to obtain a court order. On December 16, 2005, Judge Connon issued a Post-Conviction Discovery Order permitting us complete and total access to all materials of Elizabeth's 1995 autopsy, including the tissue samples. With this Order in hand, Counsellor Marmer arranged for recuts to be taken of the paraffin blocks of tissue samples at the OCME, and had them delivered to Dr. Friedlander;

33. Counsellor Marmer communicated to me that Dr. Friedlander's preliminary medical analysis of Elizabeth's autopsy revealed serious errors and omissions that would not support asphyxia. Counsellor Marmer further stated that Dr. Friedlander requested that he travel to the Boston OCME so that he could microscopically examine all the original autopsy materials including the tissue samples. I then spoke with Ms. Souza, and requested that she further loan me the necessary funds for Dr. Friedlander to travel from Missouri to Boston. Ms. Souza agreed, and arrangements were made for Dr. Friedlander to visit the Office of the Chief Medical Examiner in Boston on August 25, 2006;

34. In approximately 2010, due to his ailing health, Counsellor Marmer had still not compiled a new trial motion. In my legal research at the time, I discovered a direct appeal in Commonwealth v. Durand that was reversed due to an OCME pathologist error, and the representing attorney was Gary Pelletier. I reached out to Attorney Pelletier, and inquired if he would be willing to speak with me. Pelletier and I met in Plymouth Superior Court and discussed my case. Pelletier stated that he would be willing to take the case from Counsellor Marmer. I again requested of Ms. Souza that she loan me Pelletier's retainer, and she agreed. Sometime early in Pelletier's representation he spoke with Dr. Stanton Kessler. Pelletier spoke with Ms. Souza, who eventually spoke with me and relayed the conversation and Dr. Kessler. This conversation quite specifically detailed Dr. Kessler's personal observations of Dr. Zane, as Dr. Kessler was Chief of Staff of the OCME in 1995. Sometime in either late March or early April Attorney Pelletier provided me with a March 7, 2011 authored by Dr. Kessler. That report is now subject to the exculpatory medical

evidence that the State suppressed, and is attached to my Rule 30 motion. Indeed, it was not until 2011 that I had any inkling that Dr. Zane was considered grossly incompetent and was required to be personally supervised by senior OCME pathologists;

35. For the last 17 years Belinda Souza, through loans, payment of expenses, and active participation has allowed me to diligently prosecute my wrongful conviction as an actual innocent. Ms. Souza has loaned me all necessary funds to hire, and or retain lawyers, experts; pay for mailings and phone calls; pay for legal and other research; as well as numerous other expenses all in support of the prosecution of my wrongful conviction. I confidently believe that without these private loans and her active participation that I would never have been able to expose all the State secreted exculpatory evidence on Dr. Zane's complete and utter incompetence. Accordingly, due to Ms. Souza's research efforts, the media articles about Dr. Zane's autopsy incompetence, the Time magazine article concerning the Primatene Mist inhaler deaths, and other critical exhibits would not have otherwise been available to me. Throughout the last 22 years any and all exculpatory State suppressed evidence has been newly discovered either by Ms. Souza or myself, or collection of both our efforts;

36. Throughout every stage of my criminal proceedings for the last 22 years I have focused my efforts to uncover any and all exculpatory evidence that was State suppressed. For example, on February 2017, while assisting another inmate, I found out that Dr. Zane was the medical examiner in his case. I contacted his trial attorney, Brockton Attorney Joseph F. Krowski and provided a copy of Dr. Kessler's March 7,

2011 report. Attorney Krowski replied and remarked that he had spoken with Maryland Chief Medical Examiner Dr. John Smialek, who terminated Dr. Zane because he was not fit to perform forensic pathology duties. I followed up with a letter and an affidavit, asking Attorney Krowski if he would sign the affidavit, and provide it to my current counsel Attorney Richard Shea. The signed Krowski affidavit is attached to my Rule 30 motion;

37. Among the 6th and 14th Amendment rights, as well as those parallel state and Constitutional rights, the State's suppression of Dr. Zane's incompetence denied me confrontation and compulsory process guarantees to call both Drs. Kessler and Smialek as witness for the defense. It is now beyond cavil that had this information that was exculpatory material been presented to either the Grand or Petit juries, the indictment would have been dismissed, or the verdict would have been an acquittal. My entire trial is rife with constitutional violations that have been well established long before 1995, and,

38. Lastly, this miscarriage of justice is further evidenced by the 125 days from indictment to conviction. From the very beginning I have steadfastly have protested my innocence. I reiterated this statement in an allocution to Judge Herbert Travers at the conclusion of my trial in 1995. Now, with the five expert pathologist conclusions, the highly detailed media reports, and all the other strongly supportive information regarding various doctor prescribed or self-prescribed medications taken by Elizabeth, I once again confidently state that I had nothing to do whatsoever with Elizabeth's natural causes death.

Signed, this 29th day of November 2017 under pain of perjury.

Emory G. Snell Jr.
965 Elm Street
Concord, MA 01742-2119